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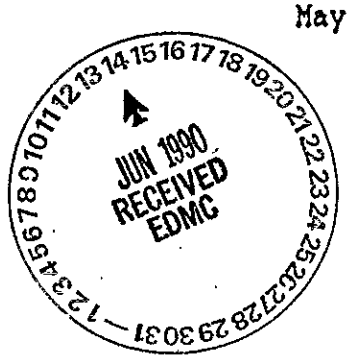
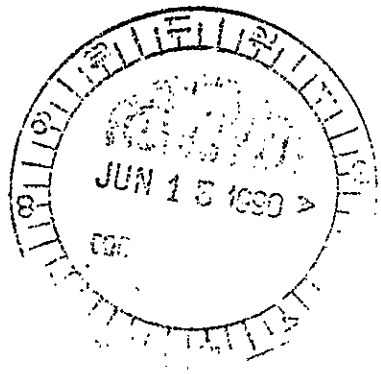
START HEAL

Hanford Education Action League

May 23, 1990





Timothy L. Nord
Hanford Project Manager
Department of Ecology
Mail Stop PV-11
Olympia, WA. 98504

Dear Mr. Nord,

The following are the comments of the Hanford Education Action League (HEAL) on the Proposed Revisions to the Hanford Federal Facility Agreement and Consent Order.

For over a year, HEAL has repeatedly called for a comprehensive land-use plan to be developed for Hanford. It is impossible to do an efficient job of cleaning up Hanford without an agreement by the citizens of Washington and the Native American Tribes on what the future uses of Hanford will be. Without a land-use plan, DOE will not know if it is wasting money by restoring a particular area of Hanford while leaving another area as a threat to future users. The DOE can no longer determine the future of Hanford, that's the proper role for Washington citizens and the Native Americans.

Although the Department of Energy has started to plan a similar process for 2-3 years from now, HEAL strongly believes that a land-use plan needs to be drawn up within the next year. We have already waited too long to start this process--the longer we wait, the greater the chance of wasting cleanup money. Those interested in Hanford cleanup are being asked to comment on proposals and make key decisions without any over-riding idea of why we are cleaning up Hanford.

Nearly everyone agrees that the wastes at Hanford should be cleaned up. But no one knows how clean it should be or which areas will need to be cleaner than others. Unfortunately it is essentially impossible to restore Hanford to its pre-1943 condition. Given this hard reality, choices need to be made on compromises--indeed some choices have already been made but without sufficient public participation.

All the citizens of Washington (and perhaps those of Oregon) along with the Native American Tribes need to shape this plan for the future of Hanford. The three parties to the cleanup agreement should make this their number one priority. In our opinion, the state should take the lead in this endeavor, rather than waiting for the DOE to define the process.

HEAL and others had many concerns last year (including land-use planning) regarding the cleanup agreement. We reviewed the draft document and submitted comments in good faith. Unfortunately that was not was how the comments were received nor considered. The three parties made no substantive changes (to the draft agreement) that were responsive to public concerns. It will be very hard to continue public support for significant funding levels if the three parties continue to ignore the public's concerns or make light of their participation.

The cleanup agreement must incorporate a formal understanding and definition of radioactive and chemical waste categories. The DOE's once-secret attempts to institute a new waste category ("incidental waste") are unacceptable. If a certain waste is defined as high-level, then the Nuclear Regulatory Commission and the public must be involved in decisions affecting the disposal of those wastes. This should be codified within the context of the cleanup agreement.

Several events over the last year have raised serious questions about the commitment of the three parties to adequately respond to problems. Concerning the problems with ferrocyanide and hydrogen explosion hazards, DOE has demonstrated its old tendencies to hide problems from the public. HEAL continues to be concerned that there are not yet sufficient safeguards to guarantee that DOE is not hiding other hazards from the public, Ecology, or EPA. The state responded well initially to the tank explosion hazards but now appears to lack a long-term commitment to aggressively pursue the many unresolved and still troubling issues. The state and EPA are to be commended on their good response to the US Testing scandal. Overall, worker safety and public health issues from current waste management/cleanup efforts are not receiving sufficient attention by the three parties.

The thirty-day comment period was too short; forty-five days would have been more reasonable. Also the deadline of May 25 should have specified whether comments had to be received by that date or simply postmarked.

HEAL is submitting additional comments under a separate cover. These comments will arrive next week from F. Robert Cook who is under contract to HEAL. HEAL hopes that all of our comments will be given much more serious attention than they were last year. If you need clarification of any of our concerns, please contact me at (509) 624-7256.

Sincerely,

Jim Thomas

Jim Thomas
Staff Researcher

2552 Harris Avenue
Richland, Washington
May 25, 1990

Timothy L. Nord
Hanford Project Manager
Washington Dept. of Ecology
Mail Stop PV-11
Olympia, Washington 98504

Dear Mr Nord:

Attached are comments that I prepared for the Hanford Education Action League (HEAL) concerning proposed revisions to the Hanford Federal Facility Agreement and Consent Order.
HEAL is submitting additional comments under separate cover which will endorse these comments.

Sincerely,

F. Robert Cook

Attachment as noted:

The following comments were prepared by F. R. Cook for the Hanford Education Action League (HEAL). They supplement other comments forwarded by HEAL under separate cover.

COMMENTS REGARDING CHANGES TO TRI-PARTY AGREEMENT

1. RESPONSE TO PUBLIC COMMENTS INADEQUATE; PUBLIC LARGELY IGNORED--Response to the public comments on the original proposed Agreement and Consent Order of March 1989 was disappointing at best. A review of the changes accomplished, Attachment 1 to "Response to Comments on the Hanford Federal Facility Agreement and Consent Order" of July, 1989 confirms the mundane content of the revisions incorporated as a result of comments.

The responses to many comments appeared to be a reiteration of Department of Energy positions with no attempt to resolve the comment by adopting a different policy. (An example is the response to a public comment requesting definition of the term, "administrative record" reviewed in comment 2 below.) In many other cases issues were raised and recommendations made to no avail. In other cases the public comment was misinterpreted or not addressed in the response.

To provide accountability for the resolution of comments, actual written or verbal recorded comments should be included in the response document. This will allow reviewers to see the actual text of the comment and to judge the adequacy of the response. In addition the Nuclear Waste Advisory Council should review the public comments and consider with voting public proposals. This will provide a more impartial evaluation of the public comment.

This is consistent with response 5.3, page 30, of the July 1989 "Response to Comments" document cited above, indicating a role for the Nuclear Waste Advisory Council.

2. DEFINE ADMINISTRATIVE RECORD AND INCLUDE ALL INFORMATION THAT IS "CONSIDERED"--In original comments to the proposed Tri-Party Agreement the following comment was made:

> 4. The definition of "Administrative Record" is ambiguous particularly relative to information which is considered under RCRA, but does not "support" a RCRA permit decision. Would such information be incorporated into the administrative record and become available to the public? Is the "administrative record" different for information pertinent to RCRA vs CERCLA? The definition suggests this to be the case. A SINGLE FUNCTIONAL DEFINITION OF "ADMINISTRATIVE RECORD" SHOULD BE INCORPORATED INTO THE ACTION PLAN.

This comment was made in recognition of the first paragraph of Section 9.4 of the Action Plan which indicated that:

> "The administrative record is the body of documents and information that is considered OR relied upon (emphasis added) in order to arrive at a final decision for remedial action or hazardous waste management."

The Tri-Party response to this comment was addressed in two separate comments, 16.18 and 16.19 as follows:

> "The Office of Solid Waste and Emergency Response has provided guidance on when draft documents should be included in the administrative record (OSWER Directive 9833.3A, March 1, 1989 as follows:
>
> "G. Draft Documents and Internal Memoranda
>
> In general, only final documents should be included in the administrative record file. The record file should not include preliminary documents such as drafts and internal memoranda. Such documents are excluded from the record file because drafts and internal memoranda are often revised or superseded by subsequent drafts and memoranda prior to the selection of the response action. The preliminary documents are, therefore, not in fact considered or relied on (emphasis added) in making the response action.
>
> Drafts (or portions of them) and internal memoranda should be included, however, in two instances. First, if a draft document or internal memorandum is the basis for a decision (e.g., the draft contains factual information not included in a final document, a final document does not exist, or did not exist when the decision was made), the Agency should place the draft document or internal memorandum in the record file.
>
> Second, if a draft document or internal memorandum is circulated to an outside party who them submits comments which the decision maker considers or relies on when making a response action decision, relevant portions of the draft document or the memorandum and the comments on that document should be included in the record file.
>
> Examples of internal memoranda and staff notes which should not be included in the record file are documents that express tentative opinions or recommendations of staff to other staff or management, or internal documents that evaluate alternative viewpoints.
>
> Drafts and internal memoranda may also be subject to

claims of privilege..."

Consistent with this policy, draft materials and memoranda internal to the Department of Energy and its contractors will not become part of the administrative record. However, in accordance with the OSWER directive, drafts submitted to EPA and Ecology are placed into the administrative record, including comments received from EPA or Ecology and responses to those comments."

The second comment response pertinent to the public comment is as follows:

"It is the intent of all parties that the administrative record for RCRA Corrective Actions be functionally equivalent to that required by CERCLA. Therefore, OSWER Directive 9833.3A will be used as guidance for all operable unit administrative records. With respect to RCRA permit applications and closure plans, the intent is to include all information "considered AND relied upon" (emphasis added) in making permit or closure decisions. Table 9-3 of the Action Plan specifies those documents and types of documents to be made part of the administrative record for both RCRA and CERCLA."

The response occasioned no change to the Action Plan. However it did effectively contradict the definition, meager as it was, in the first paragraph of Section 9.4, cited above.

This tactic is a common tactic that DOE uses to change something in a specification without really making an actual change. Note how the words "considered OR relied upon" became "considered AND relied upon" in the DOE response. Furthermore the common definition of the word "considered" is arbitrarily modified to delimit the extent of its meaning with respect to DOE records by the DOE declaration:

"The preliminary documents are, therefore, not in fact considered or relied on in making the response action."

COMMENTER'S CONCLUSION--

The comment response by DOE analyzed above indicates a unambiguous ruse to avoid compliance with the letter and spirit of the laws requiring production of an "administrative record."

Since the Tri-Party agreement is not bound by the "guidance" provided in the DOE directive, 9833.3A, the parties should take

steps to modify the definition of "administrative record" in the action plan to eliminate the vagueness and contradictions occasioned by the response comments and to clearly specify that all information that is "considered or relied upon" is in fact the operational definition for the Tri-Party Agreement.

This definition should clearly include all drafts of all documents and comments occasioning changes in those drafts documents. Internal correspondence, memos, letters, notes, presentations, etc. should be included in the administrative record. Without such a record it is impossible to review the decision process to determine whether it was arbitrary or not. Information which comes to the cognitive notice of personnel, (staff) in a decision making organization is necessarily considered in the process of the final decision. Part of a valid decision making process is to identify information and recommendations for actions that are inconsistent with or do not support the final decision and to explain this conclusion.

3. ADD QA AND RAW DATA RECORDS TO ADMINISTRATIVE RECORD--Another public comment on the Action Plan not addressed in the July 1989 Responses was the following comment:

> "A quality assurance program records system should be integral with the public information system. In this regard it is assumed from the definition of "administrative record" that quality assurance information would be considered part of the administrative record and made publicly available accordingly. If this is not the case Section 9.4 should be clarified to require the availability of quality assurance information."

The changes proposed to the Table 9-3 in Section 9.4 of the Action Plan should include "Quality Assurance Records". If this category of information would not include raw data records, then another category of information "Raw Data Records" should be included. These categories should be included for both CERCLA and RCRA work.

4. REPORTING RAW DATA--The addition of Section 9.6, "Data Reporting Requirements" should require the reporting of all raw data collected whether validated or not. The time allowance for reporting raw data should be much shorter than appears to be proposed--(36 days plus the time between creation of the data and "receipt of laboratory data". All time periods should be measured from the time the data is created. For example, a reasonable time between the creation of raw data and the reporting to the lead agency might be 2 days. The reporting of validated data might be reasonably accomplished within 7 days of the creation of the data.

5. DEFINITION OF "DATA"--The term "data" as used in section 9.6

should be defined. It would appear from the context of 9.6 that only data "collected at each operable unit..." is covered by the reporting requirements of 9.6, since that is all the unit managers will list for information of the respective parties. For example, will there be lists of chemical analytical data created in laboratories?

The second paragraph of 9.6 suggests that only organic and inorganic chemical analytical data produced in a laboratory will require validation. However, it is common that validation be accomplished for all data even though it may be a trivial process for some types of data. It is recommended that validation be required for all data of a factual (observed) nature and deduced data which derives directly from factual data.

Reporting of deduced data from factual (observed) data should always include reference to records that contain the raw factual (observed) data so that information pertinent to checking the verification and validation processes for derived data is readily available to auditors or the regulatory agency. This will provide traceability required for acceptable quality assurance.

6. SCHEDULES FOR DATA ANALYSES--Section 9.62., "Data Analyses Schedules" is poorly written to the point of being an unacceptable specification. It should be rewritten to unambiguously specify a maximum time between obtaining a sample and analyzing a sample. The basis for specifying schedules should derive from the need for the data, the concerns with maintaining representative samples in storage waiting for analysis, and general good technical management of the decision making process. Such good technical management wants as much factual data input as possible to make decisions as fast as possible.

The lengthy arbitrary time limits identified are unfounded from a technical viewpoint. Much shorter limits should be specified with the option that specific waivers may be obtained from the respective unit managers for analyses that take a long time, for example, more than a week. This is the best means of managing (and avoiding) long que lines for analyses of samples.

7. RISK ASSESSMENT SCHEDULES--One of the original public comments on the Tri-Party Agreement was as follows:

> "Hanford waste disposal plans and past operations have indicated that there is an explosion potential of various compounds, including ferro-cyanide-nitrate complex salts existing in the large underground storage tanks for high level radioactive waste. This represents a risk to workers and the general public. The risk, although having been identified for years, has not been quantitatively assessed. A PNL report that qualitatively addresses the risk is PNL

5441, "Complexant Stability Investigation Task I, Ferrocyanide Solids," of November 9, 1984. A high priority task to complete a quantitative risk assessment of this and other explosion hazards should be planned and incorporated in the scheduled activities."

This comment was responded to by DOE with the Department of Ecology avoiding apparent input or responsibility for the response. It included the following:

"In 1985, Pacific Northwest Laboratory (PNL) completed a comprehensive review of the thermodynamics and kinetics of organics with explosive potentials. The reaction of organic compounds (in both single-shell and double-shell tanks) with inorganic salts to form explosive substances is nonexistent."

The idea of accomplishing a quantitative risk assessment was never addressed in the response since the apparent DOE conclusion was there was a zero risk or as in the case of the ferro-cyanide-nitrate/nitrite explosion a situation that "does not pose a hazard."

As DOE found out a mere six months after the DOE response to the comment, there in fact is a risk associated with organic compounds and probably inorganic salts as well by the formation of explosive mixtures in the double-shell tank slurries--now a major concern at Hanford.

COMMENTER'S CONCLUSION--

Again the Tri-Party Agreement should address safety issues associated with the storage and waste management facilities at Hanford. The schedule of milestones should include completion of quantitative risk assessments for public health and safety, including worker health and safety, for the various facilities and disposal/cleanup areas covered by the agreement.

Given the complex nature of the operations and the many unknown conditions, judging safety margins on anything less than the suggested quantitative risk assessments amounts to negligence on the part of the regulators, as well as, the Department of Energy.

8. The definition for "Validated Data" should be revised to apply to validation of all data, not just chemical analytical data. The reference to specific guidelines in the proposed definition should be eliminated. The definition should stand alone, if it is to be a useful definition, consistent with generally accepted technical/specification document preparation practice.

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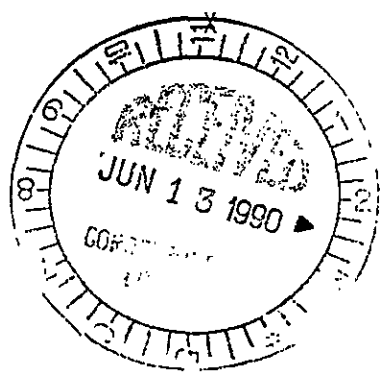

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